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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 152–163) is reported at 127 F. Supp. 439. The opinion of the court of appeals (R. 176–180) is reported at 224 F. 2d 381.

JURISDICTION

The judgment of the court of appeals was entered June 30, 1955 (R. 181). A timely petition for rehearing was denied October 14, 1955 (R. 181). The petition for a writ of certiorari was filed January 9, 1956, and granted February 27, 1956 (R. 182). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U. S. C. 1345 reads as follows:

> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

28 U. S. C. 2283 reads as follows:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress; or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Art. 1, § 10, cl. 1 of the United States Constitution provides as follows:

> No State shall * * * pass * * * any law impairing the Obligation of Contracts * * *.

Section 1 of Act No. 315 of Louisiana, 1940, reads as follows:

> Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

QUESTION PRESENTED

Whether a United States district court, in which a suit by the United States to quiet title to mineral rights is pending, may enjoin the prosecution of a case theretofore brought in a state court against a lessee of the United States to adjudicate the title of the United States to the same mineral rights, where the state proceeding threatens irreparable injury to the interests of the United States.

STATEMENT

Pursuant to a contract of purchase and sale of March, 1935, between the United States and the executors and trustees of the Estate of Joseph Leiter (R. 63–70), Thomas Leiter, as heir of Joseph Leiter, in December, 1938, conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana (R. 75–83). The deed (R. 81–82) contained a mineral reservation identical to that contained in the 1935 agreement (R. 65–66), under which the grantor reserved until April 1, 1945, the right to mine and remove all valuable minerals. If for three years prior to April 1, 1945, mineral operations were conducted to commercial advantage for an average of 50 days a year, the mineral rights were to be extended for an additional five years to a tract of 25 acres around each well producing or being developed on April 1, 1945. The right to mine such tracts was to be extended for additional five-year periods whenever operations during the preceding five years had been for an average of 50 days a year. It was further provided, however, that on April 1, 1945, or at the termination

of any extended period, "the right to mine shall terminate, and complete fee in the land [shall] become vested in the United States." (R. 81–82.)[1] No mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the petitioner or anyone acting under or through them (R. 153).

In March, 1949, the United States issued oil and gas leases covering portions of the property conveyed to it by Leiter to Frank J. Lobrano and Allen L. Lobrano (R. 84–100). The Lobranos granted the operating rights under these leases to The California Company (R. 33–42). That company, up to the time the present injunction was sought, had drilled 80 producing wells at an average cost of $160,000 each, and was producing oil and gas in large quantities (R. 29, 153). The United States had then received more than $3,500,000 in royalties (R. 153). Any interruption in the operation of these wells would cause irreparable damage to the United States (R. 153; see also R. 28–30).[2]

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[1] For convenient reference, the text of the mineral reservation is set forth in the Appendix, *infra*, pp. 46–47.

[2] The damage to be anticipated is disclosed by the joint affidavit of Elmer D. Hayman and Charles R. Blomberg, petroleum engineers employed by the California Company (R. 28–30). The affidavit concludes:

"That the first well on this property was completed in January of 1950, since which time The California Company staff of geologists, petroleum engineers and construction engineers have continuously studied the technical aspects of production from this field and have developed techniques which they consider will result in maximum recovery of oil and gas; that about

In August, 1953, petitioner commenced an action against The California Company and Allen J. Lobrano in the Twenty-Fifth Judicial District for the Parish of Plaquemines, Louisiana. Its complaint asserted (R. 101–102) that it was the owner of "All of the oil, gas and other minerals, and all of the oil, gas and mineral rights in, on or that may be under" the lands conveyed to the United States by Leiter in December 1938. Petitioner claimed title (R. 106–107) by virtue of the mineral reservation in that deed, a deed from Thomas Leiter to Humble Oil and Refining Company in October 1943, a deed from Humble to Leiter dated November 18, 1952, a deed from Leiter to petitioner dated November 24, 1952, and an act of confirmation, ratification and conveyance by Leiter to petitioner dated December 26, 1952. All of these

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sixty-five percent of the wells which are producing oil on the lands purchased by the United States from Thomas Leiter are being operated by a gas injection method, whereby subsurface pressures are maintained in order to effect maximum recovery of producible oil; that the information developed by The California Company and the experience which it has attained in the operation of this particular oil field render it capable of more efficiently drilling and operating such field than any other operator; that the whole theory and approach to production employed by The California Company could be gravely interfered with and much potential production lost if a well were to be improperly located on the property, or if the overall scheme of gas injection, as related to production of oil, were interrupted or interfered with; that if possession of this oil field were taken away from The California Company, due to the complicated nature of the operation it would be impossible for even the most experienced and competent operator to continue or re-establish the operation of the field without permanent and irreparable loss."

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instruments were recorded in Plaquemines Parish, and were attached to the state court complaint (R. 111–140).

The state court complaint also alleged (R. 108):

> * * * that the rights of petitioner sued upon herein in and to all the oil, gas and other minerals under the lands described * * * are imprescriptible by virtue of Act 315 of the Louisiana Legislature of 1940 (R. S. 9:5806), and that petitioner now owns all of the oil, gas and other minerals, and is the owner of all the oil, gas and mineral rights, in, on and under said lands.

The prayer of the complaint (R. 109–110) was for a judgment against The California Company and Lobrano "recognizing" petitioner as the owner of the minerals and mineral rights involved and that as such owner it was entitled to full and undisturbed possession thereof, and "ordering the defendants * * * to deliver possession of said property to" petitioner. There was a further prayer for an accounting of the minerals removed and a consequent judgment for their value.

In March, 1954, the United States commenced the present action against petitioner in the federal district court and named as additional parties defendant Allen L. Lobrano, one of its mineral lessees, the heirs of its other mineral lessee, Frank J. Lobrano, deceased, and The California Company. Its complaint (R. 1–17), after stating the substance of the foregoing, averred (R. 14) that the state court suit—

> is an attempt by defendant herein to have the title of the United States of America adjudicated upon directly in that proceeding and to wrest possession of the property away from the United States therein, all to the permanent and irreparable injury and detriment of the United States.

The complaint prayed in substance for a judgment (1) quieting the Government's title to the minerals and mineral rights, (2) canceling, as clouds on that title, the instruments by virtue of which petitioner claimed title and (3) granting preliminary and permanent injunctions against prosecution of the state court suit (R. 15–16).

On April 3, 1954, the United States applied for a temporary restraining order against prosecution of the state court suit (R. 18–19). The supporting affidavit of the United States Attorney (R. 19–22) disclosed the following:

In December, 1953, the defendants in the state court suit, namely, the lessees of the United States, had filed exceptions challenging the legal sufficiency of petitioner's complaint therein on the ground among others that, since it sought a judgment that the United States did not own the minerals, it was a suit against the United States (R. 21–22, 143–144). On March 17, 1954—the date the Government's action was filed in the federal court and while the exceptions were still pending—the United States Attorney had informed the state court of the filing of the federal action (R. 20). However, on March 23, 1954, the state court entered judgment overruling the exceptions (R. 145–

149) on the ground that by virtue of the Louisiana Act 315 of 1940 petitioner's complaint "discloses both a legal right of action and a cause of action."

On April 3, 1954, the federal district court granted a 10-day restraining order (R. 22–23) which thereafter was indefinitely extended (R. 23–24), and on April 6, 1954, petitioner moved to dismiss this suit or to stay proceedings in it until the state court suit had been determined, on the ground that the state court had previously assumed jurisdiction "of this controversy" and of the property involved (R. 25–26).

A hearing on the Government's motion for a preliminary injunction and petitioner's motions to dismiss or stay was held on May 21, 1954, when evidence establishing the foregoing facts was introduced (R. 44–152), and thereafter the district court filed its opinion (R. 152–163) and an order denying motions of petitioner to dismiss or stay proceedings in the Government's suit, and granting a preliminary injunction against further prosecution of petitioner's state court action, pending determination of the action in the federal court or until further order of that court. Upon appeal, the order of the district court was affirmed (R. 181). This Court granted certiorari on February 27, 1956 (R. 182).

SUMMARY OF ARGUMENT

1. The federal district court, upon the filing of the Government's action to quiet title to the mineral rights, acquired exclusive jurisdiction. The courts below correctly held that the issue on the merits, *i. e.*, title to the rights, is an issue between petitioner and

the United States. Petitioner concedes that the Government's action in the federal court and petitioner's action in the state court both raise the issue of the title of the United States. The Government is an indispensable party to a determination of that title question since it can be settled only in a court having jurisdiction of all interested parties, including the United States. Hence, when the Government filed its action in the federal court, as it was entitled to do under 28 U. S. C. 1345 (*supra*, p. 2), naming all other parties as defendants, the lower court became vested with jurisdiction to try the title issue, and since it is the only court having before it all indispensable parties, it was the only court having jurisdiction.

2. The state court, since it did not have before it the United States, lacked jurisdiction. The proposition that a suit which seeks an adjudication of the title of the United States is in fact a suit against the United States and beyond the jurisdiction of any court, absent the consent of Congress, is established by a series of decisions of this Court ranging from *Stanley* v. *Schwalby*, 162 U. S. 255, to *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682.

In view of the conceded fact that the state court action seeks an adjudication of the Government's title, there is no necessity for consideration of the merits in determining the question of the jurisdiction of that court. In *Land* v. *Dollar*, 330 U. S. 731, and *United States* v. *Lee*, 106 U. S. 196, where the Court did consider the merits in determining jurisdiction, the issue was not one of title but of possession only; these cases are not exceptions to the general rule that the Govern-

ment's title cannot be litigated behind its back, and do not require that the merits be considered here. But, if the merits should be considered pertinent in the case at bar, an examination of those issues leads to the same conclusion, that the United States is in fact the real owner of the mineral rights in question and is therefore a necessary party.

Petitioner's basic proposition that jurisdiction in the state court can be founded on the premise that the action there is *in rem* is without merit. This Court has held in express terms that the immunity of the United States extends not only to it as an entity but also to its property. *Stanley* v. *Schwalby,* 162 U. S. 255; *Minnesota* v. *United States,* 305 U. S. 382. The state court had no more jurisdiction to determine the title to the land in which the United States claimed an interest than to adjudge any other right of the United States.

Likewise, petitioner's suggestion that the United States or its property could through intervention be submitted to the jurisdiction of the state court in petitioner's proceeding has in terms been rejected in the two cases just cited, as well as in others. See *Carr* v. *United States,* 98 U. S. 433; *United States* v. *Shaw,* 309 U. S. 495; and *United States* v. *U. S. Fidelity & Guaranty Co.,* 309 U. S. 506. Since it is a matter of federal sovereign immunity and thus a question of power, Louisiana rules of procedure, either as to intervention or as to allowing suit in the absence of the lessor as a party, are irrelevant. Neither is petitioner's argument that the United States must be remitted to the state court supported by anything said in *United States* v. *Bank of New York & Trust Co.,*

296 U. S. 463. That case dealt with a wholly dissimilar situation and rests upon its special facts, and the decision, neither in terms nor by implication, suggests that the rule of *Stanley* v. *Schwalby*, 162 U. S. 255, is not still the law in the factual situation here presented.

3. Exclusive jurisdiction being vested in the federal court, and both courts below having found that serious and irreparable damage to the property rights of the United States was threatened by prosecution of the state court action, issuance of an injunction simply to preserve the status quo pending ultimate and authoritative determination of the merits in the only proceeding able to settle the matter conclusively—in the federal courts—was clearly justified and in aid of the jurisdiction of the courts below. Such injunctions have previously issued in federal courts in a variety of situations where, as here, after the commencement of state court action against its officers threatening its rights, the Government commenced proceedings in the federal courts.

28 U. S. C. 2283, barring injunctions against state court proceedings except where authorized by statute or in aid of the federal courts' jurisdiction, does not apply to the United States (which is not named) under the well-established doctrine recently redeclared by this Court in *United States* v. *United Mine Workers*, 330 U. S. 258, and in *United States* v. *Wittek*, 337 U. S. 346. Even if 28 U. S. C. 2283 be regarded as applicable to the United States, the injunction still is clearly justified as in aid of the jurisdiction of the federal district court. *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 348 U. S. 511, is not author-

ity to the contrary since there no federal proceeding, exclusive of the application for an injunction, had been commenced and there was therefore no federal court jurisdiction to protect.

Petitioner's argument that the federal proceeding should be stayed and the state court action allowed to proceed "in any event" because a question of local law, the interpretation of Louisiana Act 315, may be determined by the state tribunals in such a way as to avoid constitutional questions is without merit. The first question, the construction of the contract, is a question of federal law. The fact that a question of local law may also be involved does not bear on the exclusive jurisdiction of the federal court, on the one hand, or cure want of jurisdiction in the state court, on the other. While the abstract "principle of abstention" invoked by petitioner is in no wise challenged by the Government, its employment in the present situation as an instrument to permit suit against the United States without its consent, the result contended for by petitioner, was properly rejected below and should be rejected here.

ARGUMENT

Both courts below have disposed of the case on the same theory of decision, as follows: The title to the mineral rights is an issue between petitioner on the one hand and the United States on the other; when the United States filed its complaint in the federal district court, naming as defendants the petitioner and all other interested parties, that court was vested with exclusive jurisdiction to determine the title question; the suit instituted by petitioner in the Louisiana

state court, seeking an adjudication of the same issue, though nominally against Government lessees, was in fact a suit against the United States, to which the United States was not a party, and could not be made a party; and that, since Congressional consent to the bringing of such a suit was lacking, the suit was beyond the jurisdiction of the state court. Both courts below, having found that irreparable damage would result if the state court action proceeded and resulted in the ouster of the Government's lessees from possession, concluded that the federal court could and should protect its jurisdiction by enjoining further prosecution of the state court action pending decision by the federal court on the merits, or further order of that court.

In the circumstances of this case, where the United States instead of maintaining its immunity from suit has submitted the issue for judicial determination, and where the United States is powerless to protect its rights in the state court proceeding, the conclusion that the jurisdiction of the federal court should be protected is entirely justified.

I

THE FEDERAL DISTRICT COURT HAS EXCLUSIVE JURISDICTION TO DETERMINE THE TITLE OF THE UNITED STATES TO THE MINERAL RIGHTS CLAIMED BY PETITIONER

Since any rights which petitioner may have rest on the mineral reservation in its predecessor's contract with, and deed to, the United States, and since the United States continues to hold title pursuant to the deed, it is clear that the issue of title to the mineral rights is an issue between petitioner and the

United States. As stated by the court of appeals (R. 179), "Obviously the controversy as to title is between the appellant [petitioner] and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party." Indeed, petitioner in its petition for a writ of certiorari (p. 3) and in its brief (p. 2) states that the "subsidiary questions" upon which the case turns are "(1) whether the United States District Court has exclusive jurisdiction to determine the title of the United States to real property; or (2) as petitioner contends, whether the United States may be required to intervene in the previously instituted *in rem* suit pending in the State Court." This is a forthright acknowledgment that the issue on the merits is the same in both the federal court and the state court actions and that petitioner's action in the state court seeks an adjudication that the United States does not have title.

Jurisdiction to try the Government's title can exist only in a court which has jurisdiction of the United States. The provisions of 28 U. S. C. 1345 (*supra*, p. 2) confer original jurisdiction on the United States district courts of all civil actions commenced by the United States as plaintiff. When the United States brought suit in the district court to quiet title, that court obtained jurisdiction over all the interested parties as well as over the subject matter. The United States, of course, could have filed a separate and independent action, as plaintiff, in the Louisiana state

court for Plaquemines Parish to have its title to the mineral rights determined, but it did not choose to do this and filed the present action instead, as it had every right to do under the statutory provision cited above.[3] It is not a party to the pending action in the state court against its leasee, and, as is pointed out below (*infra*, p. 17), cannot properly protect its rights in that court through intervention. Consequently, when this action was instituted, the federal district court became vested with exclusive jurisdiction to adjudicate with respect to the mineral rights of the United States since it was the only court which had any legal power or authority to pass upon the Government's title.

As the district court stated in its opinion (R. 159):

> * * * the United States has decided to come into this court under 28 U. S. C. 1345 and ask that its title claim to the property in question be adjudicated, and that pending adjudication the proceedings brought in the state court against

[3] Since the United States is thus given the clear right to enter the federal courts, it is not necessary that the Government justify its election to enter those courts for the vindication of its rights. But we point out that in doing so in this instance the Government was following a long-established policy. Thus, where Congress has waived federal immunity and consented that the United States may be sued it "has provided generally for suits against the United States in the federal courts," and a consent statute which does not in terms authorize a suit in the state courts will be construed as limited to federal courts. *Minnesota* v. *United States*, 305 U. S. 382, 388–389. The genesis of this policy was stated as early as 1821 in *Cohens* v. *Virginia*, 6 Wheat. 264, 387. Moreover, this case on the merits involves important federal questions (*infra*, pp. 43–44), a sufficient reason for the Government's presenting the case to federal, rather than state, courts.

its mineral lessees be enjoined. Not only has the United States a right to proceed thusly, but an injunction should be issued to protect the jurisdiction of this court, pending determination of the ownership of the property in suit.

All the parties necessary to make this determination are before this court. The United States, an indispensable party insofar as the state proceedings seek to adjudicate title to the property, is not before the state court. Consequently, since the state court action cannot settle this contest for ownership of these mineral rights between Leiter Minerals and the United States, further proceedings therein can only impinge on the jurisdiction of this court and confuse the real issues in suit.

This jurisdiction was not concurrent with that of the Louisiana state court, which could not validly determine the title of the United States in the action pending before it since the United States was not, and could not be, a party to that action. See Point II, *infra,* pp. 22–35.

The court below had occasion to pass upon a somewhat similar situation in the case of *United States Department of Agriculture* v. *Hunter,* 171 F. 2d 793 (C. A. 5). In that action it appeared that Hunter and others had acquired certain lands from the United States by quitclaim deeds in which the Government reserved certain mineral, oil and gas rights. The Government's grantees claimed that the mineral reservations in the deeds were invalid and unlawful and filed an action against the Secretary and the Department of Agriculture to quiet their title to the mineral

rights and to remove clouds upon their asserted title. The court reversed and set aside a judgment of the district court in favor of the plaintiffs and directed that the complaint be dismissed, and stated at pages 794–795:

> If the deeds ought to be reformed or the reservation ought to be cancelled or a new quitclaim ought to be made under the later statutes, supposing them to be applicable, the United States ought to be in court if it has consented to be sued; *and if not, since the whole result of the decree is to transfer from the United States to the plaintiffs three-fourths of the minerals, oil and gas in the lands, the court had no power to accomplish this.* [Emphasis added.]

Furthermore, the United States cannot lawfully intervene in the pending state court action as a party defendant (as distinguished from bringing its own suit as plaintiff).[4] This is so because no officer or agent of the United States has any power or authority to submit the United States to suit in a case of this kind, and any judgment rendered under such circumstances by the Louisiana courts concerning the validity of the title of the United States would not be be binding on the United States. A case directly in point is *Stanley* v. *Schwalby*, 162 U. S. 255. In that case the plaintiff had filed an action in a Texas state court to try title to certain land which was occupied

[4] If the United States had sought to intervene it would have had to be as a party defendant since its interests are adverse to those of the plaintiff, and fully compatible with those of the defendants. See *infra*, pp. 33–34.

by the defendants who were federal officers. The Attorney General intervened in the action in behalf of the United States and claimed that the United States had title to the property. It was held that "no suit can be maintained against the United States, or against [its] property, in any court, without express authority of Congress," and (p. 270) that the Attorney General had no authority to litigate the title of the United States in the state court action and that the judgment of the Texas court which decreed that the United States did not have title to the property was void as to the United States.

The facts of that case are the same from a legal standpoint as in the case at bar, and the *Schwalby* decision, relied upon by both courts below (R. 156, 162), has been cited repeatedly by this and other courts (and as recently, for example, as in *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 689 (fn. 9)) for the proposition that where federal officers are sued to try the issue of title to property and the real party in interest on that question is the United States, there exists no jurisdiction to entertain the suit in the absence of Congressional consent—that there is a complete lack of authority to submit the United States or its property to such a suit, and that accordingly the suit must be dismissed. The same must be true where the nominal defendants are lessees rather than federal officials.

Petitioner erroneously suggests (Br. 31, fn. 29) that this Court's disposition of the *Schwalby* case indicates that the title issue could be decided on the merits

in the absence of the Government. But the judgment of the state court there under review had a double aspect in that (a) it adjudged title to one-third of the property to be in the plaintiff and (b) adjudged plaintiff entitled to joint possession of the whole with the individual defendant officers. As we have stated, in dealing with the title aspect of the judgment, the Court, without reference to the merits, held that the United States had not consented to a suit and had reposed no power in anyone to submit it or its property to suit, and the Court disposed of this portion of the judgment (162 U. S. p. 272) on the ground that, so far as it adjudicated title, the judgment was "against the United States and * * * their property * * *." And the Court's order that the action be dismissed "as against the United States," construed in the light of the foregoing, clearly meant that there was no jurisdiction to try the title in the absence of the Government. The case therefore is dispositive here since petitioner concedes that, in its attempted state court suit, the title issue, under Louisiana law, must be adjudicated.[5]

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[5] It is true that ultimately the Court considered the merits in the *Schwalby* case. But this was after the title adjudication had been rejected for want of jurisdiction, as above noted, and was undertaken only in connection with the remaining part of the state court judgment dealing with possession. The Court had first recognized (p. 271) that the decision in *United States* v. *Lee*, 106 U. S. 199, sustained jurisdiction in a suit against officers for possession only, but rejected it as sustaining jurisdiction as to title. It then noted that (unlike the Louisiana law under which petitioner concedes title must be adjudicated) Texas law permitted an adjudication of possession alone or of both possession and title, and that the judgment there being reviewed undertook to adjudicate both title and possession. And, after striking down

Another case in point is *Minnesota* v. *United States*, 305 U. S. 382. There the State of Minnesota had instituted condemnation proceedings in its own courts to obtain a right of way across lands to which the United States held title in trust for certain Indians, and named the United States as an interested party to the proceedings. The case was removed to the federal court upon application of the United States Attorney who had appeared specially in the state court in behalf of the United States. It was held that the state court lacked jurisdiction of the subject matter insofar as the United States was concerned and the federal court acquired no more jurisdiction than the state court had in the first instance. The reasons for this holding were that the United States was an indispensable party to the condemnation proceedings since "a proceeding against property in which the United States has an interest is a suit against the United States" (p. 386), and the United States had not consented to be sued in the state court. The court further stated (p. 389):

> Where jurisdiction has not been conferred by Congress, no officer of the United States has power to give to any court jurisdiction of a suit against the United States.

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the title adjudication as a judgment against the United States, it then proceeded to a consideration of the merits "with a view to the ultimate determination of [what remained of] the case," that is, the award of joint possession with the officer defendants. It thus did no more than apply the *Lee* case in disposing of the issue of possession and awarded judgment for the defendants with costs.

These principles were further illustrated and extended in the case of *United States* v. *Shaw*, 309 U. S. 495, in which it was held that even where the United States properly asserts a claim in a state court proceeding the state court lacks jurisdiction to grant an affirmative judgment against the United States. And in *United States* v. *U. S. Fidelity & Guaranty Co.*, 309 U. S. 506, the United States, represented by the United States Attorney, had failed to appeal from a judgment rendered against it in certain reorganization proceedings in which it had participated. In a subsequent action filed by the United States to collect the balance of a claim from the surety of the debtor in whose favor the judgment against the United States had been rendered in the reorganization proceedings, it was held that the United States was not bound by the prior judgment even though the United States was properly a party in the reorganization proceedings and had failed to appeal from the judgment against it. Cf. *Carr* v. *United States*, 98 U. S. 433.

It is clear, therefore, that a court may make a valid adjudication of the title of the United States only in an action in which the United States is plaintiff. In view of the foregoing, it is apparent that the federal district court has exclusive jurisdiction of this action.

II

THE LOUISIANA STATE COURT LACKS JURISDICTION TO DETERMINE THE TITLE OF THE UNITED STATES

A. THE SUIT FILED BY PETITIONER IN THE LOUISIANA COURT IS IN FACT A SUIT AGAINST THE UNITED STATES, TO WHICH THE UNITED STATES IS NOT A PARTY AND, ABSENT CONGRESSIONAL CONSENT, CANNOT BE MADE A PARTY, AND THE STATE COURT IS THEREFORE WITHOUT JURISDICTION

As we have previously noted (*supra*, p. 14), petitioner makes no pretense that the basic issue in the proceeding filed by it in the Louisiana court against the Government's lessees is different from the issue in the federal court action filed against petitioner by the United States, that is to say, whether the United States or petitioner owns the mineral rights. Petitioner cannot do otherwise since there can be no doubt that in the state court action petitioner seeks an adjudication that title is in it.[6] It is clear, therefore, that petitioner's action in the state court directly affects the property rights of the United States.

The conclusion of both courts below (R. 155–156, 179) that the state court acquired no jurisdiction to determine title is supported by a long line of decisions

[6] Under Louisiana practice an adverse claimant to real estate who is out of possession, as is petitioner here, must bring a "petitory" action known as "an action of revendication" in which the plaintiff must establish its *title* (as distinct from a right of possession) or else its entire claim fails (Arts. 43, 44, La. Code of Practice).

of this Court. The law is firmly settled that a suit which seeks an adjudication of title to property of a sovereign or to interfere with the use and disposition by the sovereign of its property is a suit against the government, and that, absent Congressional or legislative consent, such a suit is beyond the jurisdiction of any court. *Carr* v. *United States,* 98 U. S. 433, 437–438; *Cunningham* v. *Macon & Brunswick R. R. Co.,* 109 U. S. 446, 457; *Christian* v. *Atlantic & N. C. R. R. Co.,* 133 U. S. 233; *Belknap* v. *Schild,* 161 U. S. 10; *Stanley* v. *Schwalby,* 162 U. S. 255; *Minnesota* v. *Hitchcock,* 185 U. S. 373; *Oregon* v. *Hitchcock,* 202 U. S. 60; *Naganab* v. *Hitchcock,* 202 U. S. 473; *Louisiana* v. *Garfield,* 211 U. S. 70; *Hopkins* v. *Clemson College,* 221 U. S. 636, 648–649; *Goldberg* v. *Daniels,* 231 U. S. 218; *Lankford* v. *Platte Iron Works,* 235 U. S. 461; *New Mexico* v. *Lane,* 243 U. S. 52; *Morrison* v. *Work,* 266 U. S. 481, 485–486; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 118; *Minnesota* v. *United States,* 305 U. S. 382; *United States* v. *Shaw,* 309 U. S. 495; *United States* v. *U. S. Fidelity & Guaranty Co.,* 309 U. S. 506; *Mine Safety Appliance Co.* v. *Forrestal,* 326 U. S. 371; *Larson* v. *Domestic & Foreign Commerce Corp.,* 337 U. S. 682.

In the *Larson* case, this Court (337 U. S. at pp. 687–688) declared that:

> The question [of whether a given suit is in fact a suit against the United States] becomes difficult and the area of controversy is entered when the suit is not one for damages but for

> specific relief: *i. e.*, the recovery of specific property or monies, ejectment from land, or injunction either directing or restraining the defendant officer's actions. In each such case the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign. For the sovereign can act only through agents and, when an agent's actions are restrained, the sovereign itself may, through him, be restrained. As indicated, this question does not arise because of any distinction between law and equity. It arises whenever suit is brought against an officer of the sovereign in which the relief sought from him is not compensation for an alleged wrong but, rather, the prevention or discontinuance, *in rem*, of the wrong. In each such case the compulsion, which the court is asked to impose, may be compulsion against the sovereign, although nominally directed against the individual officer. If it is, then the suit is barred, not because it is a suit against an officer of the Government, but because it is, in substance, a suit against the Government over which the court, in the absence of consent, has no jurisdiction.

It is submitted that the compulsion which the Louisiana court is asked to exercise in petitioner's suit is "compulsion against the sovereign [the United States]" although nominally the suit is directed against the Government's lessees; that being true, the state court action is in fact against the United States, and since the United States has not consented thereto, such suit was beyond the jurisdiction of the Louisiana court.

B. TREATING THE CASE AS ONE IN WHICH THE MERITS MAY BE LOOKED TO IN DETERMINING JURISDICTION, THE CONCLUSION THAT THE STATE COURT ACTION IS IN REALITY A SUIT AGAINST THE UNITED STATES IS CONFIRMED

It is true, of course, that in the *Larson* case this Court did observe (337 U. S. at p. 690) that "the jurisdiction of the court to hear the case may depend, as we have recently recognized, upon the decision which it ultimately reaches on the merits." However, beyond citing the decision in *Land* v. *Dollar*, 330 U. S. 731, this Court did not there indicate the circumstances when such an examination of the merits may be relevant to a determination of the jurisdictional question. *United States* v. *Lee*, 106 U. S. 196, is another case where this Court turned its decision on the jurisdictional question upon a consideration of the merits. In both the *Dollar* and *Lee* cases the suits were technically for possession only. And since, as petitioner forthrightly concedes, its suit in the state court does seek to adjudicate the title of the United States, that fact is conclusive against petitioner's contention that the state court has jurisdiction, and resort to a consideration of the merits is neither necessary nor justified. See the long line of cases cited *supra*, p. 23.

But if the court should consider the merits, the express contract of purchase and resulting deed from Thomas Leiter, under whom petitioner claims, support the Government's case. This document contained the mineral reservation set out in the Appendix (*infra*, pp. 46–47). The deed (R. 75–82) is unambig-

uous. It clearly does the following: Thomas Leiter, for a stated consideration, conveyed the property in suit to the United States (R. 75), subject to a mineral reservation until April 1, 1945, in favor of Leiter. Under that reservation (R. 81–82; App., *infra*, pp. 46–47), Leiter had the right to mine and remove minerals for a period expiring on April 1, 1945. That period would be extended only if mineral operations meeting certain stated requirements had been conducted during the three years preceding April 1, 1945. It is unquestioned in this case that "neither Thomas Leiter, Leiter Minerals, Inc., nor any other person acting through or under them has ever conducted any mineral operations of any kind pursuant to the reservation of the mineral rights in the deed to the United States" (R. 153). It has never been suggested that there were any mineral activities prior to the successful development by the Government's lessees. It is thus apparent that no extension beyond April 1, 1945, ever matured and that the rights expired as of that date. On the result which followed in this situation the deed specifically provided as follows (R. 82; App., *infra*, p. 47):

> Provided that at the termination of the ten (10) year period of reservation, if not extended, * * *, the right to mine shall terminate, and complete fee in the land become vested in the United States.

Clearer words cannot be devised; on April 1, 1945, under an express contract of the United States, the Government acquired an absolute fee to the property

here in question, including minerals and all other interests.[7]

Since the United States acquired the mineral rights by contract, petitioner's reliance on Louisiana Act No. 315 of 1940 presents a second fundamental federal question of the power of the state in 1940 to destroy contract rights validly acquired by the United States in 1935. As to this we submit that, under our constitutional scheme, the assertion of such power falls of its own weight, and it is clear that, if construed as impairing the contract of the United States, the statute is unconstitutional under Article 1, Section 10, Clause 1, and beyond the power of Louisiana or any other state of the union.[8]

The decision of the court below in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (C. A. 5), relied upon by petitioner (Br. 38), lends no support whatever to petitioner's claim to the minerals here. There the grantor of the United States had, prior to conveying the land to the Government, conveyed the minerals in the property to another in perpetuity, and the subsequent conveyance to the United States was expressly subject to that prior disposition of the minerals. There was therefore no contract right of the United

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[7] While Louisiana law is irrelevant and federal law governs (*infra*, p. 43), it is clear that the language here in question, under that law or the law of any other state, could not have any meaning other than that we have ascribed to it.

[8] There is no state interpretation of the state statute which can support petitioner's claim and, at the same time, avoid the constitutional question of the power of the state to control the federal title.

States ever to acquire the minerals. Its grantor no longer owned them and the Government was on express notice of that fact as well as the fact that they were not included in the grant. Consequently the Government's claim was bottomed solely on the prescriptive, non-user statutes of Louisiana. The court below did not, therefore, hold in the *Nebo* case that Act No. 315 could impair a contract right of the United States, but that the prescriptive laws of Louisiana, upon which alone the Government could there rely, were in the nature of statutes of limitation, created no contract right, and could be modified or repealed at the will of the state. This the court below spelled out in concluding its opinion (p. 1010).

> * * * All that Bodcaw [the Government's grantor] had which it could sell to the United was the timber land itself. That was the obligation of the contract and it remains unimpaired. By virtue of its ownership of the land appellant could merely hope that the outstanding servitude might lapse but this hope or expectancy was born of a statute of prescription based on the then existing public policy of the State as declared by its legislature. It was not a part of the obligation of the contract. It was wholly given by law and the power that gave it could increase, diminish, or otherwise alter, or wholly take it away without violating the Federal Constitution.

Here the Government's right is bottomed squarely on an express contract, depends in no degree upon the law of Louisiana, and we think the implication is clear in the above quotation that, had that been true

in the *Nebo* case, the court below would have had no trouble in concluding that such a right was protected completely by the Constitution.

The precise question was, however, reached in *Hickman* v. *United States,* 135 F. Supp. 919, rehearing denied, 140 F. Supp. 759 (W. D. La.). There, as here, plaintiff's predecessor sold to the United States certain land. The deed in express terms reserved mineral rights for a period of ten years and for extended periods if certain conditions relating to commercially profitable mineral operations were met. There as here, also, it was provided that at the end of the 10-year period, or any extended period, if such conditions were not met, the rights reserved were to terminate "and a complete fee in the land [shall] become vested in the United States." The plaintiff sued the United States under the Tucker Act for a money judgment, based upon bonus money or royalties paid under a government lease subsequently issued, but the district court dismissed for want of jurisdiction, the court observing that (135 F. Supp. p. 919) the plaintiffs were "nominally seeking a small money judgment against the United States, but actually and indirectly presenting for adjudication the legal title to a certain mineral servitude." And in meeting and rejecting arguments advanced by plaintiffs in support of their motion for rehearing, the court stated (140 F. Supp. 760):

> If they rely upon the contract *and* the statute, which they actually are doing, this Court has no jurisdiction because the express terms of the

> contract, limiting the life of the servitude to ten years in the absence of development, would be rendered nugatory by the Act of 1940, *without the Government's consent:* a quasi-contract.
>
> * * * But this contract was not silent! It spoke clearly on the very subject that is here chiefly involved, namely, the term of the servitude. The Act of 1940 would nullify that highly important provision of the contract, and in doing so, it would create a new contract and supply a consent that never existed—a quasi-contract forced upon the Government by legislative fiat.

We contend, therefore, that the United States is clearly the owner of the minerals and the state court action filed by petitioner is in reality and fact a suit against the Government under either of the two approaches to that question and, since no consent by Congress has been given, that court could acquire no jurisdiction of the suit.

C. PETITIONER'S CONTENTION FOR JURISDICTION IN THE STATE COURT IS UNTENABLE

Petitioner's contention that the state court acquired jurisdiction is bottomed squarely on the assertion (Br., Point II, p. 21 *et seq.*) that the action there filed was an action *in rem*, and that accordingly the United States is remitted to that court. We do not accept, even for purposes of argument, the assertion that the suit in the state court is an *in rem* proceeding, but whether *in rem* or not it is of no different character in this respect than the many cases cited below (*infra*, p. 37) wherein suits were instituted against

federal officers to establish title to property in possession of the United States, and where the real parties to the issue of title were the plaintiff and the United States, not its officers or agents. Surely those cases are not now to be disowned on the argument that, although the federal government as an entity is clothed with sovereign immunity from suit, that immunity can be circumvented by proceeding against its property and in its absence. The principle is too well settled that sovereign immunity cannot be avoided, where the title to government property is in issue, by proceeding against an official or other agent of the sovereign. For instance, to cite but two of the many cases, in *Stanley* v. *Schwalby,* 162 U. S. 255, 269–270, the Court stated that "It is a fundamental principle of public law, affirmed by a long series of decisions of this court, and clearly recognized in its former opinion in this case, that no suit can be maintained against the United States, *or against their property,* in any court, without express authority of Congress," and that "Neither the Secretary of War nor the Attorney General, nor any subordinate of either, has been authorized to waive the exemption of the United States from judicial process, or to submit the United States, *or their property,* to the jurisdiction of the court in a suit brought against their officers." [Emphasis added.]

Again, in *Minnesota* v. *United States,* 305 U. S. 382, a true *in rem* proceeding was consented to by Congress when it consented to condemnation proceedings against Indian lands. That the consent of

Congress was essential to maintenance of such a suit was made clear by this Court's statement (pp. 386–387) that "a proceeding against property in which the United States has an interest is a suit against the United States," and that "Minnesota cannot maintain this suit against the United States unless authorized by some act of Congress." That the consent of Congress was a *sine qua non* to jurisdiction was further emphasized by the ruling that the consent there given must be strictly followed, that it did not permit proceedings to be brought in any but a federal court, and that the action begun in the state court must be dismissed for lack of jurisdiction.

If it is true, as we believe we have shown, that by any standard of testing the question, petitioner's state court action involves a property right "in which the United States has an interest," that right is as immune from attack, absent Congressional consent, as is the United States, and the necessity of consent in the case at bar cannot on any theory be dispensed with.

Proceeding from its insupportable proposition that title to federal property can be attacked without the consent of the Government, petitioner argues (Br. 23–28) that the United States could, and must, be remitted to the state court proceeding in order to defend its rights, relying almost exclusively on the authority of this Court's decision in *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463. We shall discuss this case in greater detail *infra*, pp. 41–42. Here it suffices to point out that the state proceeding in that case was not in any sense a suit

against the United States since the United States had no claim to the funds there involved when the state proceedings were commenced. The *claim* of the United States—which was, of course, not in possession of the property—arose long after the state court had assumed control over the property. The *res* in question being thus committed by the New York courts to the custody of their officials, the federal court could not deal with it without disturbing the actual possession of the state courts. The United States could submit its claim to determination by the state court in the liquidation proceedings since it would thereby be asserting a claim to property not in its possession, not submitting to be sued with respect to property now in its possession (as here). The cases are thus clearly distinguishable.

The petitioner's citation of Article 392 of the Louisiana Code of Practice as proof that the United States would under state law be "considered as plaintiff" (Br. 28) is clearly inaccurate. The section referred to, which is quoted in full at page four of petitioner's brief, refers to "the plaintiff in intervention" and then states that he shall be considered as a plaintiff with respect to the jurisdiction of the defendant. But Article 389 of the Louisiana Code of Practice makes it clear that an intervener may become a party either "by joining the plaintiff in claiming the same thing, or something connected with it, or by uniting with the defendant in resisting the claims of the plaintiff, or, where his interest requires it, by opposing both." In this case, the United States would be "uniting with the defendant in resisting the

claims of the plaintiff" and would therefore be a defendant in intervention under state practice rather than a plaintiff in intervention. Moreover, the question is one of power, not of procedure, and the lack of power in any federal official so to submit the United States or its property to the jurisdiction of any court as a defendant is not supplied by anything Louisiana law may provide. It would in fact be defending against the claim brought by petitioner. And petitioner's suggestion (Br. 29) that 5 U. S. C. 316 supplies such authority to the Solicitor General of the United States misreads that section, since obviously Congress was not delegating to the Solicitor General its entire power to consent to being sued.

Finally, on this point petitioner argues (Br. 30–33) that under Louisiana law, as interpreted in *Dreux* v. *Kennedy*, 12 Robinson (La. Reps.) 489, a title action may be maintained against an oil and gas lessee without the presence of the lessor. If, as we have shown, the state court action is a suit against the United States, Louisiana law is irrelevant. Petitioner is arguing that under Louisiana law the maintenance of the action does not require consent. We are here dealing with sovereign immunity of the United States, and that immunity clearly would not exist if it were subject to the will of any state. It is again a question of power, and the power to submit the United States or its property to suit resides in only one source, the United States itself, speaking through its Congress. Congress has neither consented to suit in this case, nor has it indicated a willingness to leave that im-

portant decision in any class of cases to Louisiana or the other states.[9]

III

ISSUANCE OF THE INJUNCTION WAS AN APPROPRIATE EXERCISE OF JUDICIAL POWER UNDER THE CIRCUMSTANCES OF THIS CASE

There is, as we believe we have shown, jurisdiction in the federal district court of the suit filed by the United States. The court of appeals stated (R. 179):

> * * * We have no misgivings as to the sufficiency of the complaint and believe that the appellee is on firm ground in contending that in this suit, wherein the United States is plaintiff, the district court under the clear provisions of the statute (28 U. S. C. § 1345) became vested with exclusive jurisdiction to determine the title of the United States to the mineral

[9] In a supplemental brief in support of its petition for a writ of certiorari, and in its brief now before the Court (pp. 31–33), petitioner cites an unreported decision of the court of appeals below, superseded by the decision in *Gulf Refining Company* v. *Isaac R. Price, et al.*, 232 F. 2d 25, and argues that this decision was inconsistent with the case at bar. In that case the court below, on the strength of *Dreux* v. *Kennedy*, *supra*, held that the State of Louisiana was not an indispensable party to maintenance of an action against an oil and gas lessee *of the state*. In the first place, as petitioner concedes (Br. 32), that decision was withdrawn by the court below on the ground that no such issue was raised by the pleadings. 232 F. 2d 25. In its earlier decision the court below may have reasoned that Louisiana law, as interpreted by its own courts, was competent to and did settle the question as to whether a lessee *of the state* could be sued in the absence of the state as party. Such a result warrants no implication that the court has abandoned the views expressed in the instant case since here Louisiana law is irrelevant and federal immunity is involved.

> rights claimed by appellant. All the parties necessary to make this determination were before the court and the court had jurisdiction to grant the relief prayed. *Humble Oil & Refining Co.* v. *Sun Oil Co.*, 5 Cir., 191 F. 2d 705.

That being so, the district court had inherent power and authority to protect that exclusive jurisdiction, and where, as here, both courts below have found (R. 159–160, 180) that irreparable damage to the property is threatened if the state court action proceeds, issuance of the injunction was not only clearly proper but quite necessary to protect the undoubted jurisdiction of the federal court by preserving the status quo.[10] As stated by the district court (R. 159):

> * * *, since the state court action cannot settle this contest for ownership of these mineral rights between Leiter Minerals and the United States, further proceedings therein can only impinge on the jurisdiction of this court and confuse the real issues in suit.

There can be no question of the existence of that power in the federal courts,[11] and the question here, as in every other case, is as to the appropriateness of its

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[10] In this Court, petitioner challenges the findings of both courts below that there would be irreparable damage by suggesting (Br. 34) that ouster of the federal lessees might be avoided by the taking of a "suspensive appeal." But obviously this affords no positive protection to the Government since its lessees may or may not be able or willing to post the heavy bond which would be required. Nor is there any firm assurance that the lessees would appeal from an adverse decision.

[11] This Court recently exercised it in *United States* v. *Louisiana*, 351 U. S. 978, now pending in this Court.

exercise. The instant case is typical of many in which the United States, after action has been instituted against its property, has brought its own action in the federal courts, thus providing a forum which alone could authoritatively settle the issues raised, and in such cases the federal courts have issued preliminary injunctions to preserve the status quo. *United States* v. *McIntosh,* 57 F. 2d 573, 576–578 (E. D. Va.); *United States* v. *Cain,* 72 F. Supp. 897, 899 (W. D. Mich.); *United States* v. *Phillips,* 33 F. Supp. 261 (N. D. Okla.); *Brown* v. *Wright,* 137 F. 2d 484, 488 (C. A. 4); *United States* v. *Taylor's Oak Ridge Corp.,* 89 F. Supp. 28 (E. D. Tenn.); *United States* v. *Babcock,* 6 F. 2d 160, 161 (D. Ind.); *United States* v. *Prince William County,* 9 F. Supp. 219 (E. D. Va.), affirmed, 79 F. 2d 1007, certiorari denied, 297 U. S. 714; *United States.* v. *Inabo,* 291 Fed. 416, 417 (E. D. Wash.).

The practical considerations favoring this practice were well stated in the *McIntosh* case, *supra,* as follows (57 F. 2d 577):

> In cases where federal jurisdiction is exclusive, the application of section 379 [predecessor of present 28 U. S. C. 2283] would defeat its real purpose and intention (to avoid conflict between courts) because the federal case *must* go on, by reason of the supremacy of the laws of the United States, under the Constitution, and, if the state court case also goes on, confusion and possible clashes might unfortunately occur.

This brings us to a consideration of 28 U. S. C. 2283. That section provides (*supra*, p. 2) that a federal court "may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress; or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment." Properly construed, this provision has no application to suits instituted by the United States since it is a general rule of construction that "statutes which in general terms divert pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." *United States* v. *United Mine Workers,* 330 U. S. 258, 272. See also *United States* v. *Wittek,* 337 U. S. 346; *United States* v. *Herron,* 20 Wall. 251, 263; *United States* v. *Stevenson,* 215 U. S. 190, 197; *United States* v. *Wyoming,* 331 U. S. 440, 449. This rule of construction was specifically applied to 28 U. S. C. 2283 in *United States* v. *Taylor's Oak Ridge Corporation,* 89 F. Supp. 28, 32 (E. D. Tenn.), where the court stated: "The rule of comity which has been made into statute, 28 U. S. C. § 2283, is not applicable where the United States is complainant, for the reason that the sovereign is not included within its terms." See also *Brown* v. *Wright,* 137 F. 2d 484, 488 (C. A. 4). There can be no question that prior to the passage of 28 U. S. C. 2283, the courts recognized the right of the United States to prevent trial of cases involving its title behind its back through the injunctive process. See cases cited at page 37, *supra.* Since the United States is not specifically referred to in the statute, this right should not be considered as taken away.

But in any event the statute makes an exception for suits brought to protect the jurisdiction of a district court. In this case, since exclusive jurisdiction to try the issue was vested in the federal court, it is clear that an injunction was necessary to protect its jurisdiction. This would probably be considered clear merely from reading the terms of the exception but the notes of the revisers of the Judicial Code make it certain. The revisers stated that the language of 28 U. S. C. 2283 was used with the intention of "restor[ing] the basic law" as it stood theretofore. Reviser's Notes, H. Rept. No. 308, 80th Cong., 1st Sess., A–182. As the cases cited above illustrate, the basic law codified in the revision recognized this exception from the prior limitations on the injunctive power. Nor does the decision in *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 348 U. S. 511, now relied on by petitioner (Br. 13–15), lend the slightest support to its claim. The Court specifically found at page 515 that "No such exception had been established by judicial decision under former § 265."

Petitioner's case is pitched on the *in rem*-priority of jurisdiction doctrine,[12] but as the court of appeals

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[12] The basis for this doctrine was expressed by this Court in *Kline* v. *Burke Construction Co.*, 260 U. S. 226, at 230:

"The rank and authority of the [federal and state] courts are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply."

held (R. 180), "The rule as to *in rem* actions which appellant [petitioner] invokes is predicated upon principles of comity between State and Federal Courts of concurrent jurisdiction, and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine the title of the United States to the minerals and mineral rights claimed by the appellant." Thus, it is profitless here to consider cases where the question has arisen under circumstances where the two courts have unquestioned jurisdiction and the priority may be decisive. In cases of concurrent jurisdiction, either final judgment settles the matter. Here, even if petitioner had a favorable judgment of the state court today, the United States would be entitled to an injunction by the federal court against any threat to its property rights or interference by petitioner with the present oil operations pending determination of its suit. This was recognized by this Court in *United States* v. *Lee*, 106 U. S. 196, 222. While petitioner (Br. 18) labels this as *dictum*, we submit that it was an important consideration in the minds of the bare majority which sustained jurisdiction in that case, and that, regardless of this, the proposition is correct.[13]

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[13] See *Carr* v. *United States*, 98 U. S. 433; *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, 452; *Stanley* v. *Schwalby*, 162 U. S. 255, 271; *Tindal* v. *Wesley*, 167 U. S 204, 223–224; *Scranton* v. *Wheeler*, 179 U. S. 141, 152–153; *Iron Cliffs Co.* v. *Negaunee Iron Co.*, 197 U. S. 463, 472–473; *McClellan* v. *Carland*, 217 U. S. 268, 282; *Hussey* v. *United States*, 222 U. S. 88, 93; *Missouri* v. *Fiske*, 290 U. S. 18, 29; *Wood* v. *Phillips*, 50 F. 2d 714, 717 (C. A. 4); *United States* v. *McIntosh*, 57 F. 2d 573, 578–579, 2

Nor is petitioner's contention supported by the decision in *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, upon which it primarily relies. That case was carefully considered by both courts below (R. 160–162, 179–180) and found not to support petitioner's claims. The subject matter of the action was a privately owned fund constituting assets of three dissolved Russian insurance companies. The state court had in 1925 appointed a liquidator who deposited the funds in banks designated by the court and the funds were held subject to appropriate orders of that court for distribution to creditors. Eight years later, in 1933, the Soviet Government assigned its claim against the funds to the United States, and the federal government thereafter sued in the federal court to establish title to and obtain possession of the funds. This Court affirmed a dismissal upon the ground that the state court had first acquired jurisdiction and control over the entire fund and that continuation of such control was necessary to protect the rights of claimants in the state court proceeding.

F. Supp. 244, 250, 255 (E. D. Va.); *Whitehead* v. *Cheres*, 67 F. 2d 316 (C. A. 5); *Appalachian Electric Power Co.* v. *Smith*, 67 F. 2d 451, 456–458 (C. A. 4); *Correa* v. *Barbour*, 71 F. 2d 9, 12 (C. A. 1); *Stone* v. *Interstate Natural Gas Co.*, 103 F. 2d 544, 547 (C. A. 5), affirmed *per curiam*, 308 U. S. 522; *Blondet* v. *Hadley*, 144 F. 2d 370, 371–372 (C. A. 1); *Scranton* v. *Wheeler*, 57 Fed. 803, 807 (C. A. 6), reversed on another ground, 163 U. S. 703 (see 179 U. S. at 144–6); *United States* v. *Van Horn*, 197 Fed. 611, 615, 617 (D. Colo.); *Crane* v. *United States*, 44 C. Cls. 324, 354–5; affirmed *sub nom. Hussey* v. *United States*, 222 U. S. 88, 93; but cf. *Land* v. *Dollar*, 190 F. 2d 366 (C. A. D. C.), certiorari granted, 341 U. S. 737, writ dismissed, 344 U. S. 806; *Sawyer* v. *Dollar*, 190 F. 2d 623 (C. A. D. C.), certiorari granted, 342 U. S. 875, judgment vacated as moot, 344 U. S. 806.

The conclusion in that case was based on facts not present here. There, a true *res* was validly under the control of the state court at a time when the United States had not the slightest interest in it or claim to it, and the Government acquired no interest until eight years later, and never acquired possession. The interest the United States claimed was adverse to those of the other claimants to the fund (who were not joined as parties to the Government's suit), so that its relation to the state court suit was essentially that of a plaintiff, seeking to recover money for itself, rather than that of a defendant. See also *supra*, pp. 33–34. Here, title to and possession of the property has been in the United States since 1938, 15 years before petitioner filed its state court action, and the Government's claim of title to the minerals matured eight years before such action was instituted, and only in the federal court are all parties present.

There is no merit to petitioner's argument (Point III, Br. 35–43), that, regardless of questions of jurisdiction, the proceedings should "in any event" be stayed in the Government's federal action and the case in the state court be permitted to proceed. This is bottomed on the proposition that the construction of the state statute is a matter of state law and that if it is determined in favor of the defendants in the state case, the constitutional question will never be resolved. The fact that a question of state law may exist is, of course, no obstacle to federal jurisdiction, and the mere presence of a local question cannot, on any theory, cure a want of jurisdiction in the state court of

petitioner's action if, as both courts below have held, it is in fact a suit against the United States. If jurisdiction is lacking, there is no jurisdiction in the state court to decide any question, local or otherwise.

Moreover, the issues on the merits involve questions of federal law, not state law. The title of the United States to the minerals rests upon the interpretation and construction of its express contract with Thomas Leiter. The construction of a contract of the United States, and the title which it creates, "presents questions of federal law not controlled by the law of any State." *United States* v. *Alleghany County*, 322 U. S. 174, 183. See also *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 366–367; *Girard Trust Co.* v. *United States*, 149 F. 2d 872, 874 (C. A. 3); *Whitin Machine Works* v. *United States*, 175 F. 2d 504, 507 (C. A. 1); *United States* v. *Jones*, 176 F. 2d 278, 281 (C. A. 9).

Petitioner acknowledges, as it must (Br. 40–42), the holding in the *Alleghany County* case, but suggests that a contrary holding or substantial qualification of the doctrine is represented by the decision in *United States* v. *Standard Oil Co.*, 332 U. S. 301. The suggestion is groundless. That case did not involve a contract of the United States, and hence there was no occasion for this Court to deal with the question and it did not deal with it. The Court merely held that the wholly unrelated subject matter there involved was governed by federal law. And in the language which petitioner quotes, the Court was merely noting that in some situations the rights of

the Government might be affected by state law. But in stating that such an instance was "when it [the United States] purchases real estate from one whose title is invalid by that law in relation to another's claim," the court was not stating that the rights of the United States *vis a vis* its vendor under its contract of purchase were governed by state law, but merely that the title of the Government's vendor might turn on state law, and that if title was lacking in the vendor the United States, regardless of the meaning of its purchase agreement under federal law, acquired nothing. Here there is no question of the Government's vendor, Leiter, not having title when he contracted with the Government. Similarly, the question of *capacity* to transmit was all that was dealt with in *United States* v. *Fox,* 94 U. S. 315, cited by petitioner (Br. 42), and *Sunderland* v. *United States,* 266 U. S. 226, also cited by petitioner (Br. 43), is utterly irrelevant to this question.

The following observations of the trial court (R. 162–163) cast this case in its true perspective:

> The defendant is in a poor position to urge on a court of equity that it should be allowed to continue its suit in the state court which, as has been shown, is in effect a suit against the United States. When Thomas Leiter deeded this property in Plaquemines Parish to the United States for valuable consideration, he was bound to know that if any controversy arose between him and the United States involving that deed, he could not sue the United States without its consent except for a money judg-

ment in the Court of Claims under the Tucker Act. He was bound to know that he was dealing with a sovereign which, under the law, can choose the court in which to litigate with private citizens. Knowing these facts, neither he nor his successor in title should ask a court of equity to protect them while they sue the United States "behind its back" in a state court where it cannot be made a party.

This is not a case in which the United States is standing on its immunity from suit to avoid a trial of the issue of its rights to the minerals involved. Its suit in the federal district court is one to determine the case on its merits and the injunction sought against the state court action was prayed for to preserve the *status quo* pending that determination. Under these circumstances, petitioner is in a weak position in seeking to determine federal rights in a state court where the United States is not only not a party, but where the United States is powerless to intervene in order to protect its rights.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment below should be affirmed.

Respectfully,

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OCTOBER 1956.

APPENDIX

The pertinent provisions of the mineral reservation in the contract of sale and purchase dated March 14, 1935, between the executors and trustees of the Joseph Leiter Estate and the United States, and the resultant deed of December 21, 1938, from Thomas Leiter to the United States, are as follows:

> The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforedescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of $25,000, being the purchase price paid by said United States of America for the aforedescribed properties.
>
> Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five

(5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit; April 1, 1945.

Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors.

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